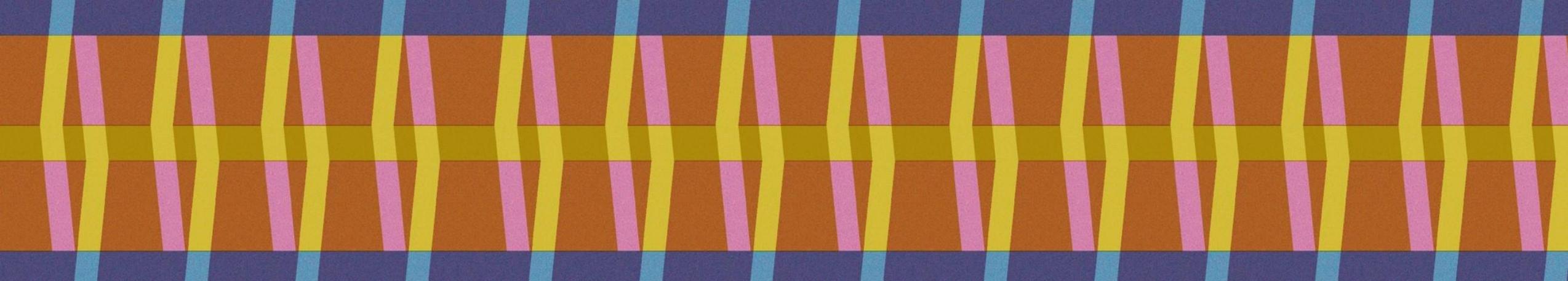


MUNICIPAL DISCLOSURE | MARCH 28-29, 2023

LAKE NATOMA INN | FOLSOM, CALIFORNIA



Session 3

Federal Continuing Disclosure Requirements

Tommy Crosby

Market Structure Manager

MSRB

Victor Hsu

Partner

Norton Rose Fulbright

Jackie Lee

EBMUD Debt Administrator

East Bay Municipal Utility District

FEDERAL CONTINUING DISCLOSURE REQUIREMENTS

Victor Hsu

Partner

Norton Rose Fulbright US LLP

Jacqueline Lee

Debt Administrator

East Bay Municipal Utility District

Tommy Crosby

Manager, Market Structure

Municipal Securities Rulemaking Board

SEC Rule 15c2-12

- Municipal issuers of publicly offered debt securities have post-closing disclosure obligations until the securities are paid or defeased in full
- Primary source of obligation of municipal issuers to provide continuing disclosure is SEC Rule 15c2-12
- Rule 15c2-12 directly governs underwriter conduct, thereby indirectly regulating municipal issuers

SEC Rule 15c2-12, continued

- Rule 15c2-12 requires underwriters in primary offerings to:
 1. obtain, review and distribute a “deemed final” Official Statement (which must include a description of any instances in the previous five years in which the municipal issuer or the obligated person failed to comply with Rule 15c2-12); and
 2. obtain a written undertaking of the municipal issuer or obligated person that it will (a) provide “annual financial information” as required by Rule 15c2-12 and (b) file timely notices of certain enumerated events.

Key Provisions of Continuing Disclosure Undertaking

A Continuing Disclosure Undertaking obligates the municipal issuer (or “obligated person”):

- to file Annual Reports on EMMA by a specified deadline each year
- to file on EMMA notices of specified “enumerated events” or “Listed Events” within 10 business days of their occurrence

Content of Annual Reports

15c2-12 Annual Reports will contain:

- Audited Financial Statements
 - ✓ Unaudited financials may be filed if audited financials are not available by the filing deadline, to be followed up by audited financials when available
- Financial Information and Operating Data (i.e., tables) identified in Continuing Disclosure Undertaking
- Additional voluntary information

Content of Annual Reports, continued

Matters to consider:

- Rule 10b-5 implications (no misleading omissions) – is there more you should be saying?
- Has anything happened since the date of the audited financial statements that has materially affected the issuer's (or obligated person's) financial condition?
- If the event is not reflected in updated tables, consider additional disclosure to make sure that you are not presenting stale or misleading information

SEC Rule 15c2-12

- Contrast this with the more stringent continuous disclosure regime of Form 10-K Annual Reports, Form 10-Q Quarterly Reports and Form 8-K Current Reports for corporate issuers of registered securities
- “Obligated persons” include conduit borrowers and pooled borrowers but do not include bond insurers or liquidity providers
- Although the direct impact of Rule 15c2-12 is on underwriters, the indirect impact (and direct purpose) is to impose continuing disclosure obligations on municipal issuers

SEC Rule 15c2-12 Listed Events

- **Summary of “Listed Events” under Rule 15c2-12:**
 - Principal and interest payment delinquencies
 - Non-payment related defaults, *if material*
 - Unscheduled draws on debt service reserves or credit enhancements reflecting financial difficulties
 - Substitution of credit or liquidity providers, or their failure to perform
 - Adverse tax opinions or other events affecting the tax-exempt status of the security
 - Modifications to rights of security holders, *if material*
 - Bond calls, *if material*
 - Tender offers and defeasances

[to be continued]

SEC Rule 15c2-12 Listed Events, continued

- Release, substitution or sale of property securing repayment of the securities, *if material*
- Rating changes
- Bankruptcy, insolvency or receivership
- Merger, consolidation, acquisition or sale of all or substantially all issuer assets, *if material*
- Appointment of successor trustee, *if material*
- Incurrence of a financial obligation, *if material*, or agreement on material terms of a financial obligation, *if material* (when no OS is filed with EMMA)
- Default, event of acceleration, termination or other similar events under the terms of a financial obligation, which reflect financial difficulties

SEC Rule 15c2-12 Exemptions

- Some municipal transactions are excluded from Rule 15c2-12
 - Certain private placements
 - Bond or note issues of less than \$1 million in principal amount
 - Certain issues sold in \$100,00 minimum denominations that mature in nine months or less from date of initial issuance

SEC Rule 15c2-12, summarized

- **In summary, Rule 15c2-12 requires municipal issuers to agree to a continuing disclosure undertaking to:**
 - provide annual updates of financial information and operating data from the OS
 - provide audited financial statements for the most recent fiscal year
 - provide prompt disclosure of specified post-issuance material events

Voluntary Disclosure

- Issuers may submit disclosures that go beyond what is strictly required under the Continuing Disclosure Undertaking.
- Rule 10b-5 antifraud provisions apply to voluntary disclosure.
- Why take on this unnecessary risk?

Selective Disclosure/Insider Trading

- **Selective Disclosure**

- ✓ Regulation FD (specific prohibition on selective disclosure for corporates) does not apply to municipal securities
- ✓ But selective disclosure can still create anti-fraud liability for municipal issuers particularly if the information selectively disclosed should have been included in an offering document or other **required** disclosure.
- ✓ If some investor is asking for a particular bit of information – other investors may be similarly interested in such information. Remember “reasonable investor” standard.

Selective Disclosure/Insider Trading, continued

- **Insider Trading**

- ✓ Unlawful to **purchase or sell a security** while in possession of **material non-public information** (for municipal bonds most likely defeasances or taxability determinations) in **breach of a duty or other relationship of trust or confidence**.
- ✓ Intent based crime.
- ✓ Generally room for issuers to provide information to a diligent analyst – subject to considerations of whether that information is included in presently required disclosure.

Taking continuing disclosure obligations seriously

- MCDC Initiative
- Recent SEC Enforcement Actions

Compliance with SEC Rule 15c2-12

- Adopt a formal Disclosure Policy
 - ✓ Determine how to apply best practices in a manner that is relevant and most practical for issuer
 - ✓ Review periodically to ensure consistency with market and regulatory expectations
- Designate a Disclosure Officer
 - ✓ Responsible for compliance with disclosure policy and CDAs
- Monitor issuer operations for occurrence of Listed Events
 - ✓ Ensure prompt Issuer recognition of Listed Events 15 and 16 as they are more general in nature and not specific to a bond or obligation

Compliance with SEC Rule 15c2-12, continued

- Formalize post-issuance investor communications; have procedures for addressing investor questions; avoid selective disclosure
- Conduct prior review of official notices, press releases and other communications that are reasonably expected to be relied upon by investors

Compliance with SEC Rule 15c2-12, continued

- **Annual Disclosure Training**
 - Include staff and officials responsible for producing, reviewing and approving disclosure
 - Empower staff at all levels to critically examine information to be provided to investors
- **Reliance on Disclosure Counsel**
 - Consider consulting with Disclosure Counsel to assist with more complicated EMMA filings (e.g., filings that require additional information to avoid making materially misleading statements)
 - Reliance must be reasonable; engaging Disclosure Counsel will not completely shield an issuer from liability for false or misleading filings
 - As with the POS and OS, the Issuer bears primary responsibility under the federal securities laws for the accuracy and sufficiency of EMMA filings

Compliance with SEC Rule 15c2-12, continued

- In new bond offerings, expect Underwriters to conduct thorough due diligence on compliance with continuing disclosure obligations
- Material noncompliance, even if remedied, must be disclosed in future Official Statements for five years following such noncompliance
- Underwriters in new bond financings now routinely hire contractors to conduct five-year look-back reviews of continuing disclosure compliance
- Strong record of continuing disclosure compliance enhances investor relations

Issuer Compliance with SEC Rule 15c2-12

- **Common Listed Events Pitfalls**

- Dissemination Agent lapses
- 10-day timeframes for listed events
- rating changes include upgrades as well as downgrades
- rating changes include bond insurer and liquidity provider ratings

Overview of EMMA

- **Free Public Resource**
 - ✓ Get information about state, local governments and the issuances that they've made
- **Data Sources for EMMA**
 - ✓ Issuers provide official statements, annual financial disclosures, and event notices
 - ✓ Regulated Entities provide price and yield information, along with secondary market trading
 - ✓ Data Vendors provide things such as credit ratings, yield curves, and CUSIP data
- **Market Participants Visit EMMA to:**
 - ✓ Learn
 - ✓ Discover
 - ✓ Evaluate
 - ✓ Monitor EMMA

Submitting Continuing Disclosures to EMMA

- **Before you begin:**
 - ✓ Create an organization account
 - ✓ Identify the type of submission – financial or event
 - ✓ Identify the applicable categories that best describe the submission – avoid "other"!
 - ✓ Identify the issues/securities to which the disclosure applies
 - ✓ Know your preferred contact information for investor inquiries
- **After you complete a submission**
 - ✓ If a recurring submission, set up financial disclosure email reminders
 - ✓ Save your securities in one or more groups for future submissions
 - ✓ Consider customizing your issuer homepage
 - ✓ Know how to modify a submission if you later find an inaccuracy

EMMA Filings – Nuts and Bolts

- Required format for filings is word-searchable PDF
- Any version of Adobe Acrobat or other software that creates PDF files may be used, so long as it can be saved, viewed, printed and retransmitted by electronic means
- No practical size limits – documents of hundred of pages can be uploaded, and a document can be associated with hundreds of CUSIP numbers

EMMA Filings – Nuts and Bolts, continued

- EMMA sends submitter a receipt every time continuing disclosure information is published
- Submitters can delete or replace a submission after it has been published
- If submitter is “timed out” due to inactivity on computer, a “save” feature is available
 - ✓ only one continuing disclosure submission can be saved at a time
 - ✓ all entered information is saved, except for uploaded documents which will need to be uploaded again when resuming work

Tools and Resources

- **Organization Account**

- ✓ Create single continuing disclosure submission account for all agents and staff of an issuer
- ✓ Allows master account administrator to securely and independently manage staff access
- ✓ Required to customize and manage issuer homepages and other **EMMA®** tools for issuers

Tools and Resources

- **CUSIP Group Management**
 - ✓ Create New Groups of securities to help with disclosure management
 - ✓ Set groups to automatically remove matured securities
 - ✓ Subscribe to receive email notifications of submissions associated with your groups

Tools and Resources

- **Financial Disclosure Email Reminders**
 - ✓ Issuers can schedule automated emails from **EMMA®** to be reminded of approaching annual or quarterly financial disclosure filing deadlines
 - ✓ Issuers can include additional contacts such as a municipal advisor to ensure all those with a role in disclosure are alerted

Tools and Resources

- **Customize Issuer Homepage**



FREDERICK COUNTY MARYLAND (MD)
 Customized by Frederick County MD Govt
 Click on a tab to access data and documents about this issuer's municipal securities.

Issuer's Contact Information

Erin White, Finance Director
 12 East Church Street
 Frederick, MD 21701
 (301) 600-1117
 financedirector@frederickcountymd.gov

Additional Contact Information

- Paying Agent/Trustee: Wilmington Trust
- McGuire Woods, LLP - Bond Counsel

Issuer Website(s)

- Frederick County MD Government

Davenport & Company - Financial Advisor

Educational Resources

-  Customizing an Issuer Homepage
-  How Can Issuers Use EMMA?
-  Contact Us

Issues

Trade Activity

Pre-Sale Documents

Official Statements

Refunded Issues

Financial Disclosures

Event-Based Disclosures

Click on the issue description to view details about the issue. View all Issues ▾

Display 10 results | Search within list:

First Previous 1 2 3 4 5 ... 14 Next Last

Issue Description	Dated Date	Maturity Dates
GENERAL OBLIGATION PUBLIC FACILITIES PROJECT AND REFUNDING BONDS, SERIES 2021A	09/28/2021	2022 to 2051
GENERAL OBLIGATION PUBLIC FACILITIES TAXABLE REFUNDING BONDS, SERIES 2021B	09/28/2021	2022 to 2039
SENIOR SPECIAL OBLIGATION REFUNDING BONDS (URBANA COMMUNITY DEVELOPMENT AUTHORITY) SERIES 2020A	11/12/2020	2021 to 2040
SUBORDINATE SPECIAL OBLIGATION REFUNDING BONDS SERIES 2020B (URBANA COMMUNITY DEVELOPMENT AUTHORITY)	11/12/2020	07/01/2040
SUBORDINATE SPECIAL OBLIGATION BONDS (URBANA COMMUNITY DEVELOPMENT AUTHORITY) SERIES 2020C	11/12/2020	07/01/2050
SPECIAL TAX A LIMITED OBLIGATION REFUNDING BONDS (JEFFERSON TECHNOLOGY PARK PROJECT), SERIES 2020A	09/17/2020	07/01/2043
TAX INCREMENT AND SPECIAL TAX B LIMITED OBLIGATION REFUNDING BONDS (JEFFERSON TECHNOLOGY PARK PROJECT), SERIES 2020B	09/17/2020	07/01/2043
TAX INCREMENT AND SPECIAL TAX B LIMITED OBLIGATION BONDS (OAKDALE-LAKE LINGANORE PROJECT) SERIES 2019	12/19/2019	2024 to 2039



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